

PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number
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on _____

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Typed or printed

name Jae Won Song, Reg. No. 59,070Application Number
10/776,100Filed
February 10, 2004First Named Inventor
Rohit ChandraArt Unit
2141Examiner
Ranodhi N. Serrao

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☐ attorney or agent of record.

Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 Reg. No. 59,070
SignatureJae Won Song
Typed or printed name(650) 335-7164
Telephone numberJanuary 4, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 of 1 forms is submitted.

**REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW IN U.S. PATENT
APPLICATION NO. 10/776,100 FILED ON 2/10/2004**

Pre-appeal brief review is appropriate in this application, because the rejections in the October 6, 2006 Final Office Action contain clear deficiencies as set forth herein.

Response to Claim Rejections under 35 USC §103

In paragraphs 7-13 of the Final Office Action, claims 12, 22, 26, 27, 38, 43, and 48 were rejected as being obvious over McKeeth and Tams. This rejection is traversed.

Independent claim 12 recites "...monitoring packets traversing the network and extracting information on the packets..." and "...the popularity of the web pages being proportionate to actual number of visits to the web pages as indicated by the extracted information..." Independent claim 38 recites "...the popularity of the retrieved web pages being determined based upon information extracted from packets traversing the Internet and being proportionate to actual number of visits to the web pages as indicated by the extracted information." Independent claim 43 also recites "...monitoring packets traversing the network and extracting information on the packets..." and "...determining the popularity of the web pages based upon the extracted information, the popularity of the web pages being proportionate to actual number of visits to the web pages..." Independent claim 48 also recites "...monitoring packets traversing the network and extracting information on the packets..." and "...the popularity of the each of the links being proportionate to number of times each of the links is actually traversed as indicated by the extracted information..." In summary, claims 12, 38, 43, and 48 variously recite determining the popularity of the web pages or links using information extracted from packets actually traversing the network, where the popularity is proportionate to actual number of visits to the web pages.

McKeeth fails to disclose or even suggest determining the popularity of the web pages as indicated by the information extracted from the packets actually traversing the network. While McKeeth mentions the term "popularity" of a link or a web site, the "popularity" of a link or web site in McKeeth is not determined from information extracted from packets traversing the network. Rather, McKeeth merely discloses determining the "popularity" of a link or web site by counting how many times that link was selected using a redirection counter at the search engine server (which stores the source search result that contains the links) or by counting how many times the web site was visited using a counter at that destination web site. *See McKeeth, col. 7, line 35 to col. 8, line 40.* Thus, the "popularity of links" in McKeeth is merely an indication of

how many times a search engine selects the link as a search result in response to user queries, or how many times a user accessed a document associated with a link, or how many times a site was visited as determined by a counter on that site. Such popularity in McKeeth is determined using counters at the source search result document including the links or at the destination web page, as opposed to packet information extracted the packets actually traversing the network. In contrast, the popularity as variously recited in claims 12, 38, 43, and 48 is determined from information extracted from packets actually traversing the network, which is distinct from counters at the source search result or the destination web site.

The inventions of claims 12, 38, 43, and 48 have significant advantages over McKeeth. First, because the popularity of links in McKeeth is determined based on the number of times the link is accessed only from a particular search engine, it is impossible for the popularity of links in McKeeth to reflect how many times the link was selected in, for example, other search engines outside that particular search engine, and thus the popularity of the link in McKeeth cannot indicate the accurate, total number of times the link was selected by all search engines. In contrast, the inventions of claims 12, 38, 43, and 48 enable determining the true popularity of a web site reflecting the number of times the web site was visited by various Internet traffic even outside a particular search engine, because the popularity is determined based upon information extracted from the packets actually traversing the Internet, rather than from information merely on a particular search engine. Second, because the popularity of links in McKeeth is determined based on how many times a site was visited as determined by a counter on that particular site, such popularity information would not be available to the search engine itself or other Internet entities external to that particular site, unless the popularity information is provided from that particular site maintaining the count to the search engine or other Internet entities external to that site. In contrast, the inventions of claims 12, 38, 43, and 48 enable determining the popularity of a web page without obtaining such popularity information from or even communicating with that particular web site, because the popularity information is determined based upon information extracted from the packets actually traversing the Internet (already external to that web site).

Tams merely discloses a network traffic probe collecting network traffic data in general, but fails to disclose or suggest using the collected network traffic data to determine the popularity of a web page, as recited in claims 12, 38, 43, and 48. *Tams*, col. 2, lines 13-28; col. 10, lines 4-18. Tams nowhere suggests that the network traffic probe analyzes the collected network traffic data to determine the popularity of a particular web page for use in ranking Internet search results.

The 2nd and 3rd paragraphs of the Final Office Action states that *prima facie* obviousness has been allegedly established because Tams is cited for teaching extracting information from packets traversing the network and McKeeth is cited for teaching determining the popularity of a web page for use in ranking Internet search results. However, even the combination of McKeeth with Tams still does not disclose determining the popularity of the web pages using or as indicated by information extracted from the packets actually traversing the network. McKeeth merely mentions the popularity of web pages determined by different methods, and Tams merely discloses collecting network traffic data unrelated to the purpose of determining the popularity of web pages. There is no disclosure or suggestion anywhere in McKeeth and Tams that the network traffic data collected in Tams can be used to determine the popularity of the web pages. That the information extracted from the packets actually traversing the network is used to determine or indicates the popularity of the web pages is an actual claim element. Because such claim element is not taught or suggested by McKeeth and Tam, *prima facie* obviousness has not been established for independent claims 12, 38, 43, and 48. See MPEP §2143.03. See also *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) ("All words in a claim must be considered in judging the patentability of that claim against the prior art").

Furthermore, there is no motivation whatsoever suggested in Tams or McKeeth to use the network traffic probes of Tams in combination with the search engine of McKeeth to determine the popularity of a web site. Paragraph 4 of the Final Office Action states that there is allegedly motivation to combine the two references merely because "[m]ckeeth teaches packets traversing the network since it is inherent that when a user clicks on a link, packets traverse the network. And Tams explicitly states packets traversing the network." However, that still falls far short of a motivation to combine McKeeth with Tams. McKeeth possibly involving packets traversing the network does not necessarily lead to a motivation to combine it with Tams to use the network traffic information collected by the network traffic probe of Tams in determining the popularity of a web page. In fact, there is simply no suggestion in McKeeth that information extracted from packets actually traversing the network may be used to determine the popularity of a web page. Rather, McKeeth teaches away of using such information extracted from packets actually traversing the network, since it teaches a number of different ways of determining the popularity of web sites, such as using counters located at the source search engine or destination web site, but never suggests the use of network traffic monitors for that purpose. Likewise, there is simply no suggestion in Tams that the network traffic information collected by the network traffic probes

can be used to determine the popularity of a web page. Tams never suggests the desirability of using the network traffic information collected by the network traffic probes of Tams to determine the popularity of a particular web site, nor does McKeeth even recognize or suggest that it would be desirable to use the network traffic information collected by the network traffic probes in Tams to determine the popularity of a particular web site. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. See *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Paragraph 8 of the Final Office Action merely conclusively states that “[i]t would have been obvious to one having ordinary skill in the art at the time of the invention to modify McKeeth to the search system comprising a plurality of monitoring devices placed in the network ...” However, a mere conclusive statement that modifications of the prior art to meet the claimed invention would have been well within the ordinary skill of the art at the time the claimed invention was made is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. See *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

Therefore, it is respectfully submitted that independent claims 12, 38, 43, and 48 are patentably distinct from McKeeth and Tams.

Claims 22, 26, and 27 depend from claim 12 and thus are also patentably distinct from McKeeth and Tams for at least the same reasons.

In paragraphs 14-29 of the Final Office Action, claims 13-15, 39-41, 16-17, 18-20, 23, 24, 21, and 25 were variously rejected as being obvious over McKeeth and Tams and further in view of various references, such as Bharat (US Patent No. 6,526,440), Vo (US Patent Application Publication No. 2003/0229692), Pulley (US Patent Application Publication No. 2002/0087679), Matsliach (US Patent No. 6,879,994), or Sehm (U.S. Patent Application Publication No. 2005/0021731). This rejection is also traversed. Claims 13-15, 39-41, 16-17, 18-20, 23, 24, 21, and 25 depend from claim 12 or 38, and thus are patentably distinct from McKeeth and Tams for at least the same reasons. The other references, Bharat, Vo, Pulley, Matsliach, and Sehm also fail to disclose determining the popularity of the web pages using the information extracted from the packets actually traversing the network.

Especially, in paragraph 25 of the Final Office Action, claim 23 was rejected as being obvious over McKeeth and Tams and further in view of Matsliach. Claim 23 recites “the processing module maintains a plurality of counters corresponding to a URL and increments a

count of one of the counters if the extracted information indicates that the web page corresponding to the URL was visited by a client device located in a geographical location corresponding to the counter of which the count was incremented, the count indicating the number of visits to the web page from client devices in the corresponding geographical location.” The Examiner points to col. 16, lines 16-35 of Matsliach for the disclosure of this limitation. However, col. 16, lines 16-35 of Matsliach does not disclose or even mention maintaining multiple counters for different geographical locations and counting the number of visits to the web page from client devices in corresponding geographical locations. Indeed, col. 16, lines 16-35 of Matsliach does not even mention the term “geographical location” and has nothing to do with maintaining multiple counters for different geographical locations, but merely discusses a process for responding to a user query regarding popular web sites. The Examiner also appears to rely on col. 6, lines 50-51 of Matsliach, which recites “User demographics: age range (and optionally, the exact age of the user), gender, nickname, user location (state), ...,” as disclosing this limitation of claim 23. However, Matsliach merely discloses maintaining such user data items corresponding to certain sites, but does not disclose that the information extracted from the packets traversing the network indicates such geographic location information as recited in claim 23. Rather, such user demographics information (including the user location) is manually input using the graphical user interface shown in FIGS. 4 and 5 (Site Location: UK or User Origin: USA). See col. 7, line 41 to col. 8, line 12 of Matsliach. Thus, claim 23 is also patentably distinct from McKeeth, Tams, and Matsliach.

Therefore, the October 6, 2006 Final Office Action contains clear deficiencies. Withdrawal of the final rejection of claims 12-27, 38-41, 43, and 48 is hereby requested.

Respectfully submitted,

Rohit Chandra

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By: Jae Won Song

Jae Won Song, Reg. No. 59,070
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel.: (650) 335-7164
Fax: (650) 938-5200